

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN SAMUEL RICH, *formerly known as SAMUEL GUILLAUME,*

:

Plaintiff,

ORDER

:

-against-

21 Civ. 3835 (AT) (GWG)

:

STATE OF NEW YORK, et al.,

:

Defendants.

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**GABRIEL W. GORENSTEIN, United States Magistrate Judge**

Plaintiff Benjamin Rich alleges in this action that defendants violated his civil rights in connection with an incident on January 6, 2016. (Docket # 1). On January 3, 2023, defendants filed a motion for summary judgment. (Docket # 95). In that motion, defendants provide evidence that Rich signed a general release on September 27, 2022, as part of separate litigation, under which he released the City from any claims occurring before that date. See Declaration of Andrew B. Spears, dated January 3, 2023 (Docket # 97), ¶ 3 & Ex. B. Defendants included this contention in their Local Rule 56.1 Statement. (Docket # 96 ¶ 5) (“On September 27, 2022, plaintiff signed a General Release in connection with [a New York State case captioned] Guillaume I.”). The defendants also served plaintiff with the notice required by Local Civil Rule 56.2, which explained that Rich “must submit evidence . . . countering the facts asserted by the defendants” in order to defeat summary judgment and noted that “[a]ny witness statements” submitted in opposition to the motion “must be in the form of affidavits.” (Docket # 99 at 1). The notice specifically alerted plaintiff that he was entitled to submit “[his] own affidavit.” Id.

Rich filed a document opposing the summary judgment motion, (Docket # 102), but it is not sworn and does not directly address the issue of whether he signed the general release. Instead it suggests that the fact that he is incarcerated bears on the issue of whether he signed the release and that he could not have appeared in front of the notary. Id. at 2-3.

In light of Rich’s pro se status, we will afford him one final opportunity to submit a sworn statement that directly addresses the issue of whether he signed the document identified as a “General Release,” which is attached as Exhibit B to the Declaration of Andrew B. Spears, dated January 3, 2023 (Docket # 97), and if so, the circumstances under which he signed it, including whether a notary was present. In any such submission, Rich must provide all information he has about the document annexed as Exhibit B and the signing of that document.

Rich shall file any such affidavit on or before April 18, 2023. Defendants may file any response within 7 days after the plaintiff's filing. If plaintiff fails to timely file a sworn statement as to these issues, the Court will deem the allegations of defendant on this issue to be uncontroverted.

SO ORDERED.

Dated: March 28, 2023  
New York, New York

  
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GABRIEL W. GORENSTEIN  
United States Magistrate Judge